IN THE HIGH COURT OF BOMBAY AT GOA
****

FIRST APPEAL NO. 70 OF 2000

Shri Nishikant Babi Chari,
r/o Mauswada, Pernem,
House No. 415, Pernem, Goa. ... Appellant

Versus

Shri Babani Sonu Chari,
r/o Posrembhat, House No.523,
Merces, Ilhas, Goa. ... Respondent.

Shri U. K. Tari, advocate for the appellant.

CORAM : F. I. REBELLO, J.

DATE : 11th July, 2003.

ORAL JUDGMENT

The appellant had filed a claim petition which came to be dismissed by Order dated 21st August, 1999. An appeal has been preferred by the claimant.

2. It is the case of the appellant that on 19th August, 1991 when he was walking along the road with one Tulshidas Chari from the Employment Exchange Office towards the main road and had reached near Caculo Circle, he saw a scooter being driven by respondent at a very high speed and in a rash and negligent manner and overtaking other vehicles. There was a pillion rider who was holding a motor-cycle wheel which dashed against his left cheek. The appellant was knocked down and suffered fracture of the left upper jaw, apart from other injuries, on account of the dash of the motor-cycle wheel. The appellant was admitted to the Goa Medical College Hospital, where he underwent an operation on 21st August, 1991 and remained an in-door patient for eight

days. Thereafter, the appellant had to go to the Goa Medical College Hospital several times for follow up treatment. He has therefore sought various amounts as set out in the claim petition.

The respondents denied that the appellant was having a monthly income of Rs.2,000/-. It was the case of the respondents that the appellant alongwith his friends were dancing on the said road for reasons best known to the appellant and as such never bothered to see the vehicles moving on the said busy road, nor observed traffic rules. It is his further case that the appellant came from the wrong side bounced and caught hold of the scooter of the respondents who were driving the scooter diligently at a slow speed. After bouncing on the scooter, respondent lost his balance and fell down and sustained injuries on his person. It was the case of the respondents that they parked their vehicle and took the appellant to a private hospital for bandaging and the appellant was given first aid on the bruises on his cheek. At the request of the appellant he carried him on his scooter to the Goa Medical College Hospital. The appellant thanked the respondent and asked him to go back to his work. It is, therefore, contended that there was nor rash and negligent driving by the respondents and, consequently, the petition should be rejected.

3. Several issues were framed of which issues no. 1

and 4 pertain to rash and negligent driving and the respective contentions of both the parties. The learned Presiding Officer Claims Tribunal decided issue nos. 1 and 4 together and relied also on the deposition of the appellant as a witness before the criminal court eventhough the said evidence was not put to the appellant and his witnesses. The learned Presiding Officer of the Claims Tribunal was impressed by the purported inconsistency in the stand of the appellants' witneses before it and before the criminal court and, accordingly answered the issue against the appellant.

In the instant case admittedly the appellant was hit on his cheek, which normally would not be caused by a dash of the motor-cycle, unless the appellant's version was accepted, namely that the pillion rider was carrying a wheel in his hands which hit him on his jaw, contrary to the version of the respondents, that the appellant fell down and sustained injuries. C.W.3, the Investigating Officer was examined. In his evidence specifically in cross-examination it has come on record that the respondent was brought to the Police Station alongwith the scooter and he denied that the respondent came voluntarily. He denied the suggestion that his opinion that respondent was driving the scooter in a rash and negligent manner was false. He denied the suggestion that the victim was coming on the wrong side and that he himself fell down from the scooter. C.W.4, Tulshidas P. Chari who was alongwith the appellant has deposed that the appellant was hit

by the wheel carried by the pillion rider on his face. In cross-examination it was put to him that the appellant did not know how to walk on the streets of Panjim and that he alongwith the appellant had gone to the bar in Shanta building to drink. His case was that they never drank. A further question was put to him which he denied that the pillion rider was holding the stepney by the side of his legs above the road level and on his left side. C.W.5 is the doctor who has deposed to the nature of the injury.

The respondent examined himself. It is his case that one of the persons ran in front of his motor-cycle and the second person came and fell on the steering wheel of his motor-cycle. His further case is that the stepney in the hands of the pillion rider fell down and went rolling. He then sets out that he helped him to reach the bus stand. The witness was confronted with his statement in the written statement that he had taken the appellant to a private doctor, to which the appellant remained quiet. The witness was then confronted with what was stated in the written statement that he had taken the appellant to the Goa Medical College Hospital. He only states that he took him to the bus stop. Witness no.2 for the respondents was Ganpat V. Ugvenkar whom the court found was drunk when he was being examined on 5th January, 1999. In his version he states that the respondent no.1 told him that he had taken the appellant to Kaunte's Hospital where he was given stitches and thereafter he had

left him at the bus stop near Dempo House.

4. From the evidence of these witnesses I find it difficult to hold that the version given by the appellant and his witnesses could not have been accepted. The case of the respondent in the written statement is that he had taken the appellant first to a private hospital and then to the Goa Medical College Hospital. That would have been only if the appellant had suffered serious injuries. The stand in the evidence before the court was a total denial that he had left the witness on the bus stop. In my opinion, this inconsistent defence of the respondent itself ought to have resulted in the court disbelieving the said evidence of the respondent. On the other hand the evidence of the appellant and his witnesses was natural. Merely because there was some inconsistency in the evidence before the criminal court, which explanation was not sought from the appellant or his witnesses, would not have been used to discredit the said witnesses. In the light of that, in my opinion, the appellant had successfully proved issue no.1 in the affirmative and, consequently, issue no.4 had to be answered in the negative.

5. The question is as to compensation. The appellant has in fact led no evidence but the fact remains that the appellant was admitted to Hospital. Dr. Maria Agnes Mascarenhas was examined. She refers to the hurt certificate issued by her. Dr. Pascoal X. Pinto was also examined. He

has deposed to the fracture. Considering all these factors, to my mind, even in the absence of any evidence for pain and suffering and for attending the hospital, the ends of justice would be met if the appellant is awarded a sum of Rs.15,000/- alongwith interest at the rate of 8% from the date of application which is 31st October, 1991.

In the light of that the following Order:-

The impugned Award is set aside. The Appeal is partly allowed. Compensation is awarded totally in the sum of Rs.15,000/- (rupees fifteen thousand only) with 8% interest thereon from 31st October, 1991 till final payment.

F. I. REBELLO, J.

mc.